

5-25-2016

California Legislature Amending and Conferring Act, May 13, 1861, Stats 1961, Chap. 352, p. 355California Statute regarding purchase of Swamp and Overflow Land

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Recommended Citation

"California Legislature Amending and Conferring Act, May 13, 1861, Stats 1961, Chap. 352, p. 355California Statute regarding purchase of Swamp and Overflow Land" (2016). *Swamp and Overflow Lands Statutes*. 4.
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4. AMENDING AND CONFERRING ACT, MAY 13, 1861 - Stats 1861, p. 355

Date: May 13, 1861

Character: Swamp and overflowed lands; salt marsh and tide lands.
Reclamation of these lands.

Reclamation: Can apply to Commission for reclamation. Engineer appointed.

a law, a bond to the Treasurer of the city and county of San Francisco, in the sum of twenty thousand dollars, with two sureties, to be approved by the Judge of the Twelfth Judicial District of the State of California, and shall file the same in the office of said Treasurer; and upon the forfeiture of said bond, it shall be the duty of the Attorney of said city and county to bring an action for the amount thereof, and upon recovery, to have the amount of said bond, with costs of suit, paid into the treasury of said city and county of San Francisco; and in case said bond shall not be executed, approved, and filed, as provided in this act; or in case of the non-performance of any of the terms, or conditions, of this act, by said grantees, his associates and assigns, required to be performed, then the franchises and privileges herein granted shall utterly cease and determine.

Disposition
of moneys.

Sec. 7. This act shall take effect and be in force, from and after its passage.

To take
effect.

352

CHAP. CCCLII.—*An Act to provide for the Reclamation and Segregation of Swamp and Overflowed, and Salt Marsh and Tide, Lands, donated to the State of California by Act of Congress.*

[Approved May 13, 1861.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. J. C. Pemberton, of Tulare County, William J. Hooten, of Solano County, B. B. Redding, of Sacramento, T. T. Bouldin, of San Joaquin County, and A. M. Winn, of Sutter County, are hereby appointed a Board of Commissioners, for the reclamation of the swamp and overflowed lands belonging to this State. Said Commissioners shall hold their office for the term of two years, and until their successors shall be elected in joint convention of the two branches of the Legislature, to be convened for that purpose. In case any of the Commissioners named in this act fail to qualify, or if a vacancy occur from death, resignation, or otherwise, the Governor shall appoint some one to fill the vacancy.

Commis-
sioners
appointed.How to fill
vacancy.

Sec. 2. The Board of Commissioners shall, within thirty days after the passage of this act, take the usual oath of office and elect one of their number as President, and another as Secretary, who shall receive no additional compensation as such President and Secretary, other than the compensation allowed to them under this act.

Oath of
office.

Sec. 3. Said Board of Commissioners, a majority of whom shall constitute a quorum, shall hold monthly meetings at the capital of the State, for the reception of petitions and the transaction of business. They may adjourn from day to day, but no adjournment shall be for a longer period than one month. They shall keep a full and complete record of all their transactions as a Board, and they shall transmit to the Governor, to be by him presented to the Legislature, an annual statement, in detail, showing the location and quantity of land reclaimed, its cost per

To meet
monthly.

To report
annually.

acre, the location and quantity, in acres, in progress of reclamation, under contract, the location and quantity of lands for the reclamation of which petitions have been received, together with such other statistical information, suggestions, and recommendations, connected with the purposes of the commission, as they may deem proper.

Petitions for
reclamation.

Duties of
Engineer.

SEC. 4. Whenever a petition shall be received by the Board of Commissioners, from the holders of patents, or certificates of purchase of swamp lands, on a tract of swamp and overflowed land susceptible of one mode, or system, of reclamation, which petition shall represent one-third, in acres, of said tract of land, asking for the drainage and reclamation of said land, it shall be the duty of the Board of Commissioners to appoint an Engineer, whose duty it shall be to make an examination and survey of said tract of land. The Engineer shall, with the plat of such examination and survey, return an exhibit, showing the levels of the country surveyed, the average depth of water in winter and in summer, the sources from whence the water flows in to cover the land, the height and width of embankments necessary to prevent overflow, the depth and width of sloughs to be filled, the streams to be diverted, and specify, in detail, the work necessary to be performed for the reclamation of the tract of country, for the reclamation of which the petition was received; also, an estimate of the total cost of the work.

Same.

SEC. 5. It shall be the duty of the Engineer so appointed to aid and assist in making plans and specifications for the reclamation of said lands, and give general directions for its reclamation, subject to the orders and control of the Board of Commissioners.

SEC. 6. The Board of Commissioners shall have power to remove the Engineers, and appoint their successors, at will.

Reclamation.

SEC. 7. If, from the report and estimates of the Engineer, it shall appear that the total cost of the complete work of permanent reclamation, including the cost of survey, advertising proposals, and other contingent expenses, properly chargeable against the tract of land so surveyed, will not exceed, in the aggregate, one dollar per acre, and such further sum as may be subscribed and paid in cash, by individuals, the Board may, in its discretion, adopt the plan so reported, or it may adopt any other plan based upon the same survey. Upon the adoption of a plan and specifications for the construction of such work, they shall cause a duplicate to be placed on the file in the County Clerk's office of one of the counties in which the said district is situate, and give notice, by publication in a newspaper published in the county, for a period of thirty days, if a newspaper be published in the county, and if none be published therein, then in a newspaper published in an adjoining county, that the plans and specifications can be seen at the County Clerk's office, and that the Board of Commissioners are prepared to receive sealed proposals for the construction of such work, in accordance with the plans and specifications, and that the same will be let to the lowest responsible bidder, stating the time and place said proposals will be received and opened. The time shall be, at least, thirty days from the first publication of said notice.

Proposals.

Awarding
of contract.

SEC. 8. The Board of Commissioners shall award said contract to the lowest responsible bidder, but shall have power to reject

any and all bids, if deemed too high, and advertise again for further proposals. Any person, or persons, to whom said contract shall be awarded, shall enter into a bond with good and sufficient sureties, to be approved by the Board of Commissioners, payable to the State of California, for the use of said swamp land district, for double the amount of the contract, conditioned for the faithful performance of said contract.

SEC. 9. Whenever it shall be found necessary to use any levee, or embankment, or other means of reclamation, which has been constructed by any person owning lands, the said levee, embankment, or other work, shall be measured, estimated, and paid for, to said owners, at the contract price, and the sum so paid shall be deducted from the amount to be paid the Contractor. Using levees already built.

SEC. 10. When any given portion of the work under contract has been completed, and such portion has been approved by the Engineer and by the Board, as being in accordance with the terms of the contract, the Board may, by a vote, approve the account for said completed portion of the work, and certify said account for fifty per cent. of the amount, to the State Board of Examiners, and on the approval of the Board of Examiners the Controller shall draw his warrant on the Treasurer, payable out of the Swamp Land Fund, for the said fifty per cent. of the amount in the account so approved. When the whole work has been completed, in accordance with the terms of the contract, the Board shall certify that the whole work has been performed in accordance with the contract, whereupon the Controller may draw his warrant in favor of the Contractor, for the remaining balance on the accounts then due; *provided*, always, that no warrant shall be drawn for any sum in payment for reclamation, which shall in the aggregate, as provided in this act, exceed one dollar per acre for the whole land thus certified as having been reclaimed; and, *provided*, further, that in no case shall an account be certified, or a warrant drawn, in payment for the reclamation of a particular district, for a greater sum than has been paid into the Swamp Land Fund from said district. Payment for reclamations

SEC. 11. No contract shall be considered as complete, until after it has been approved by the Engineer; and the work shall not be accepted by the Board, if objection be made thereto, until after an examination and report of a committee of not less than three members, whose report shall be unanimous. Contracts.

SEC. 12. The Commissioners mentioned in this act shall each receive a compensation of one hundred dollars per month, and the Commissioner who shall be elected Secretary shall receive an additional compensation of fifty dollars per month, for his services as such Secretary, payable from the Swamp Land Fund. The Civil Engineer to be selected by the Board, shall receive as compensation for his services in surveying, measuring, leveling, and estimates, a reasonable sum, to be allowed by the Board of Commissioners, which in no case shall exceed eight dollars per day for the time actually employed, and the Board may also allow reasonable compensation to such Assistants as he may require; *provided*, that in no case shall it exceed four dollars per day, and the sum so paid the Engineer and his Assistants shall be a part of the charges in the estimate of the total cost of the reclamation of the particular district of land surveyed. Pay of officers.

Copies of
surveys, etc.

SEC. 13. The copies of all surveys, field notes, plats, plans, specifications, profiles, charts, and all other papers, made and executed by the Engineer, in the discharge of his duties under the provisions of this act, shall be the property of the State. All the articles mentioned in this section shall be delivered by the Engineer, so soon as such surveys, field notes, plats, plans, specifications, profiles, charts, and all other papers be completed, to the Secretary of the Board of Commissioners, as the property of the State, for the use of the Board of Commissioners, until the expiration of their term of office, when the said articles, together with all the books, papers, contracts, and all other documents pertaining to the objects of the Commission, shall be delivered to their successors in office.

Examination
of surveys.

SEC. 14. The books, papers, contracts, agreements, and all documents, pertaining to the Commission, shall be always open to the inspection of the State Board of Examiners and to committees from either branch of the Legislature.

When reclama-
tion costs
more than
one dollar
per acre.

SEC. 15. After a petition has been received by the Board of Commissioners for the survey and reclamation of a particular tract of land deemed susceptible of one mode of reclamation, and the survey of said tract of land has been ordered, and upon the return of said survey, accompanied by the estimates, it is found that the said tract of land cannot be reclaimed, except at a cost that will exceed one dollar per acre, in the aggregate, and such sum as may have been subscribed and paid in cash by individuals, for the whole tract sought to be reclaimed, the cost of such survey paid to the Engineer shall be a charge against the particular tract of land so surveyed, to be computed in any future estimate for the reclamation of said tract of land.

Appraisers.

SEC. 16. If in the work of reclamation it be found necessary to construct levees, excavate trenches, or perform other work, on lands other than swamp and overflowed lands, the Board of Commissioners shall have power to enter upon, and take possession of, so much of said land as may be necessary for said work of reclamation. If the same be private and individual property, and the rights and privileges necessary be not granted by the owners, the Board of Commissioners shall petition the District Court of the district in which said lands is situated, to appoint three Appraisers, to assess the damages arising from the taking of such land; and the District Court shall thereupon appoint three disinterested persons, who shall have full power to proceed to such premises, and to examine, hear, and determine, all questions of damages and injuries to such land, arising from such taking, and to award the amount of the same to the person, or persons, entitled thereto, and for this purpose said Appraisers shall have power to administer oaths. The Appraisers shall make their report to the court, and the same shall be approved, or set aside, for cause shown, and if set aside, other Appraisers shall be appointed, who shall proceed in like manner; and as soon as such award shall be affirmed, it shall have the effect of a judgment. The award thus found shall be allowed by the Board of Commissioners, and shall be paid in like manner as for work under contract, and the amount thus awarded shall be computed in the total cost of reclamation, as a portion of the charges against the tract of land to be reclaimed; *provided*, that no dam-

ages shall be allowed for the use of, or for the taking of, lands, where said lands have been purchased from the State, under the several acts providing for the disposal of the swamp and overflowed lands.

SEC. 17. The Commissioners appointed, or who shall be elected, under the provisions of this act, shall each severally, before they shall qualify and enter upon the duties of their office, file with the Secretary of State a bond to be approved by the Governor, in the penal sum of ten thousand dollars, conditioned for the faithful performance of their duties as Commissioners.

Bond of
Commis-
sioners.

SEC. 18. No Commissioner shall be concerned, or interested, either directly, or indirectly, as principal partner, or agent, in any contract to be awarded by the Board, or the profits to be derived therefrom; and any Commissioner convicted of violating the provisions of this section shall be deemed guilty of felony, and such conviction shall work a forfeiture of his office, and he shall be punished by imprisonment in the State Prison for a period not less than one year nor more than five years.

Penalty
for being
interested.

SEC. 19. The County Surveyors of the several counties of this State shall, immediately after the organization of the Board of Commissioners, proceed to segregate the swamp and overflowed lands within their respective counties from the high lands in said counties, and make complete maps of all the swamp and overflowed lands within their respective counties, in legal subdivisions of sections and parts of sections, together with a tabular statement of all such lands as have been sold by the State, and under what act the same were sold, of all lands claimed and by whom claimed, and as nearly as possible by what title the same are held, and file the said tabular statement in the County Recorder's office of their respective counties, also transmit duplicates of said maps to the Surveyor-General of the State; *provided*, however, that it shall be discretionary with the Board of Commissioners whether land already surveyed and segregated under any former act for the sale and reclamation of swamp and overflowed lands shall be reseggregated or surveyed under this act; and, *provided*, further, that they shall determine whether the segregation may be made by a complete survey of all such swamp and overflowed lands into sections, or by running the line of division between the swamp and United States land and make said maps from said survey. It shall further be the duty of the County Surveyors to procure such testimony, to be taken before a Notary Public, or any officer authorized by law to administer oaths, as they shall be able to procure, that all of such lands that are embraced within the said survey and exhibited on the map, are swamp and overflowed lands; and in all cases where any of the said lands have been returned as United States lands, whether sold, or unsold, they shall state that fact and procure all the evidence that they may deem sufficient to substantiate the fact that such lands are swamp and overflowed lands, and transmit the same to the Surveyor-General of the State. As soon as practicable after the passage of this act, the Board of Commissioners shall send a copy thereof, with instructions thereupon, to the County Surveyors of all the counties in the State, with blank affidavits in the form required by the Commissioner of the General Land Office at Washington.

Duties of
County
Surveyors.

Proviso.

Duties of
Commis-
sioners.

To file maps
and surveys.

Duties of
Surveyor-
General.

To transmit
copy to U. S.
Land Office.

Duty of
Surveyor-
General.

Claims for
services.

SEC. 20. One copy of the survey and map herein required to be made, shall be retained by the County Surveyor, and shall be the property of the county; another copy, accompanied by affidavits as in this act required, covering the whole tract of swamp and overflowed land, exhibited as such on his map, and numbered with a corresponding number entered on the tract of land exhibited on the map to which it refers, shall be filed with the Surveyor-General, as hereinafter required, and the County Surveyor shall at the same time report to the Surveyor-General a general description of the land returned and mapped as swamp and overflowed, showing the cause of the overflow of the land, and a general description of the sloughs or creeks through which the waters enter into the low lands.

SEC. 21. The Surveyor-General shall compile a general map of the State in duplicate, showing all the swamp and overflowed lands of the State, which shall have been returned by the County Surveyors as the property of the State, together with the county boundary lines where crossing the same. He shall also enter thereon the number corresponding with the affidavits; he shall also compile from the testimony received and on file in his office, a general schedule of the swamp lands in the State by their description; he shall also distinguish on said map the lands already sold by the State as swamp and overflowed; he shall also prepare a report showing any cases in which the swamp lands have been infringed upon by the United States Government surveys.

SEC. 22. One of the copies of the general map to be compiled and made by the Surveyor-General, with the schedule of the swamp and overflowed lands so claimed, and the affidavits required by this act shall be by him transmitted to the Governor, and by the Governor forwarded to the proper department of the General Government at Washington, as an exhibit of the lands which the State claims under the act of Congress of September twenty-eight, eighteen hundred and fifty, and request the department to certify said land to the State of California.

SEC. 23. The Surveyor-General shall receive for his services, under the provisions of this act, and for any assistance he may require, the sum of one thousand dollars; *provided*, that one copy of the map herein required to be made, shall be the property of the State, and be turned over to his successor in office. When the Governor shall receive from the Surveyor-General the map, affidavits, and report, herein required of him, the Governor shall give to the Surveyor-General a receipt therefor, which receipt shall be a voucher upon which he may present his claim to the Board of Examiners, who are authorized to allow his account, payable out of the Swamp Land Fund.

SEC. 24. It shall be the duty of the Board of Commissioners to settle with and adjust the claims of the County Surveyor and other persons employed in selecting and segregating the swamp and overflowed lands in their respective counties, under the provisions of this act. Said Board shall have power, and they are hereby authorized to administer oaths, or affirmations, and to examine, under oath, claimants and other persons that they may call before them relating to such claims; and the Board may certify to the Board of State Examiners such allowance as shall ap-

pear right and proper in the premises. Upon the approval of the account of the Board of State Examiners, the Controller may issue his warrant in payment for the same out of the Swamp Land Fund; *provided*, that in no case shall the County Surveyor receive more than eight dollars per day, nor his Assistants more than four dollars per day.

Sec. 25. The Board of Commissioners shall ascertain the aggregate amount of the cost for the segregation and surveying of all the swamp and overflowed lands in each county, and divide the said amount by the number of sections of swamp land in said county; the cost per section thus ascertained, the Board of Commissioners shall certify to the County Treasurers, and thereafter purchasers shall pay to the County Treasurers, prior to the issuance of a certificate, the cost of survey and segregation thus ascertained. Costs of segregation.

Sec. 26. After the survey by sections and the segregation contemplated by this act has been made, any person desirous of purchasing swamp and overflowed lands shall file an affidavit in the office of the County Surveyor of the county in which the land is situate, that he has not purchased any other land under the provisions of any act to provide for the sale of swamp and overflowed lands belonging to this State, which, with the lands sought to be purchased, shall exceed six hundred and forty acres; that he has no knowledge of any other legal, or equitable, claim than his own to the tract of land desired to be purchased by him. It shall be the duty of the County Surveyor to make out a plat and field-notes for each applicant from the map on file in his office, and forward a certified copy of the same to the Surveyor-General, in accordance with An Act to provide for the Sale of the Swamp and Overflowed Lands of this State, approved April eighteenth, A. D. eighteen hundred and fifty-nine. Affidavit for purchase of lands.

Sec. 27. The provisions of this act shall apply equally to all salt, marsh, or tide, lands in this State, as to swamp and overflowed.

Sec. 28. The sum of two hundred thousand dollars, now in the Swamp Land Fund, or hereafter to be received into the Swamp Land Fund, is hereby appropriated and set apart as a fund to be applied and expended under the provisions of this act, as hereinafter provided. Appropriation.

Sec. 29. This act shall take effect and be in force, from and after its passage. To take effect.

CHAP. CCCLIII.—An Act to amend an Act entitled An Act to regulate Fees in Office in certain Counties of this State, approved April twenty-eighth, eighteen hundred and fifty seven.

[Approved May 9, 1861.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

to be hereby repealed.